

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
December 9, 2005

Present: Member Anne Sheehan
Representative of the Director of the Department of Finance
Member Windie Scott
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Jan Boel
Representative of the Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
Member Sarah Olsen
Public Member

Absent: Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Vice Chairperson Scott called the meeting to order at 10:32 a.m., and yielded the chair to Member Sheehan. She welcomed the Commission's two new members, Sarah Olsen and Steve Worthley, and indicated that Member Glaab would be absent due to family illness.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526. Discussion and action, if appropriate, on recommendation of Personnel Sub-Committee on selection and appointment of Chief Legal Counsel. The Commission may conduct interviews.

Member Sheehan adjourned into closed executive session pursuant to Government Code section 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Member Sheehan reported that the Commission met in closed executive session pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

Member Sheehan announced that the Commission appointed Ms. Camille Shelton as the new Chief Legal Counsel. She again welcomed and introduced Member Worthley, Vice-Chair of the Tulare County Board of Supervisors, and Member Olsen, public member, and stated that Member Glaab was absent due to family illness. Members Worthley and Olsen both stated that

they look forward to serving on the Commission.

APPROVAL OF MINUTES

Item 1 September 27, 2005

Upon motion by Member Boel and second by Member Scott, the minutes were unanimously adopted. Member Worthley and Member Olsen abstained.

PROPOSED CONSENT CALENDAR

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 8 *Crime Victim's Domestic Violence Incident Reports*, 99-TC-08
County of Los Angeles, Claimant
Family Code Section 6228
Statutes 1999, Chapter 1022 (AB 403)
- Item 9 *Peace Officer Personnel Records: Unfounded Complaints Against Peace
Officers, and Discovery of Peace Officer Personnel Records*, 00-TC-24 and
00-TC-25
Cities of Hayward and San Mateo, Claimants
Education Code Section 1043, Subdivision (a); Penal Code Sections 832.5,
Subdivisions (b) and (c), and 832.7, Subdivisions (b) and (e)
Statutes 1978, Chapter 630 (SB 1436); Statutes 1994, Chapter 741 (SB 2058)
- Item 11 *Handicapped and Disabled Students II*, 02-TC-40, 02-TC-49
Counties of Los Angeles and Stanislaus Counties, Claimants
Government Code Sections 7572.55 and 7576
California Code of Regulations, Title 2, Sections 60000 et seq.
(Emergency Regulations Effective July 1, 1998 [Register 98, No. 26],
Final Regulations Effective August 9, 1999 [Register 99, No. 33])
Statutes 1994, Chapter 1128 (AB 1892), Statutes 1996, Chapter 654 (AB 2726)

SET ASIDE OR AMEND PARAMETERS AND GUIDELINES BASED ON
STATUTES 2004, CHAPTER 316 (AB 2851)

- Item 12 *Photographic Record of Evidence*, 04-PGA-09 (04-RL-9807-09)
Penal Code Section 1417.3
Statutes 1985, Chapter 875 (AB 556); Statutes 1986, Chapter 734 (AB 2715);
and Statutes 1990, Chapter 382 (AB 3408)
- Item 13 *Residential Care Services*, 04-PGA-12 (CSM-4292)
Welfare and Institutions Code Sections 4075, 4076, and 5705.6
Statutes 1985, Chapter 1352 (SB 155); Title 9, California Code of Regulations,
Section 549, DMH Letters No. 85-40, 86-14, 86-26, 86-30, 87

SET ASIDE OR AMEND PARAMETERS AND GUIDELINES BASED ON
STATUTES 2004, CHAPTER 895 (AB 2855) AND STATUTES 2005, CHAPTER 677
(SB 512)

- Item 14 *Pupil Suspension: Parent Classroom Visits*, 04-PGA-17 (CSM-4474)
Education Code Section 48900.1
Statutes 1988, Chapter 1284; Statutes 1989, Chapter 213

- Item 15 *Pupil Classroom Suspensions: Counseling*, 04-PGA-23 (CSM-4458)
Education Code Sections 48900.1 and 48910
Statutes 1977, Chapter 965 (AB 530), Statutes 1983, Chapter 498 (SB 813),
Statutes 1988, Chapter 1284 (AB 3535)

- Item 16 *School Crimes Reporting, Statistics and Validation and School Crimes
Reporting II*, 05-PGA-11 (97-TC-03)
Penal Code Sections 628.2 and 628.6
Statutes 1984, Chapter 1607 (AB 2483); Statutes 1988, Chapter 78 (AB 2583)
Statutes 1989, Chapter 1457 (SB 271); Statutes 1992, Chapter 759 (AB 1248)
Statutes 1995, Chapter 410 (SB 882)
California Department of Education's
"Standard School Crime Reporting Forms" and
Title 5, California Code of Regulations sections 700-704
California Department of Education Guidelines for School Crimes Reporting

- Item 17 *Caregiver Affidavits*, 04-PGA-26 (CSM-4497)
Education Code Section 48204, Subdivision (d)
Family Code Sections 6550 and 6552
Statutes of 1994, Chapter 98 (SB 592)

- Item 18 *Pupil Exclusions*, 04-PGA-28 (CSM-4457 & 4477)
Education Code Sections 48213 and 48214
Statutes 1978, Chapter 668 (AB 2191)

- Item 19 *Graduation Requirements*, 04-PGA-30, (CSM-4435)
Education Code Section 51225.3
Statutes 1983, Chapter 498 (SB 813)

- Item 20 *National Norm-Referenced Achievement Test*, 05-PGA-03 (04-RL-9723-01)
(formerly *Standardized Testing and Reporting (STAR)*)
Education Code Sections 60607, subdivision (a), 60609, 60615, 60630,
60640, and 60641
Statutes 1997, Chapter 828 (SB 376)
California Code of Regulations, Title 5, Sections 850-870

SET ASIDE OR AMEND PARAMETERS AND GUIDELINES BASED ON
STATUTES 2005, CHAPTER 72 (AB 138)

- Item 21 *Presidential Primaries 2000*, 05-PGA-02 (99-TC-04)
Elections Code Sections 15151 and 15375
Statutes 1999, Chapter 18 (SB 100)

Member Boel moved for adoption of the consent calendar, which consisted of items 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21. With a second by Member Worthley, the consent calendar was unanimously adopted.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)

Item 3 Staff Report (if necessary)

No appeals were filed.

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing on agenda items 4, 5, 6, and 7.

HEARINGS AND DECISIONS ON TEST CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, § 17551) (action)

Item 4 *Local Recreational Areas: Background Screenings*, 01-TC-11
City of Los Angeles, Claimant
Public Resources Code Section 5164, Subdivisions (b) (1) and (2),
Statutes 2001, Chapter 777 (AB 351)

Eric Feller, Commission Counsel, presented this item. He stated that this test claim statute originally prohibited cities, counties, or special districts from hiring volunteers or employees in positions having supervisory or disciplinary authority over minors in specified recreational areas if the candidate had been convicted of certain offenses. Mr. Feller noted that in 2001, the statute was amended to require the specified prospective employees or volunteers to fill out applications and inquire after any past offenses, and to be screened by the Department of Justice.

Staff found that the activities of screening prospective employees or volunteers who meet the criteria in the statute and inquiring after their criminal histories are reimbursable. Staff recommended that the Commission adopt the staff analysis, which approves the test claim.

Parties were represented as follows: Harold Fujita, on behalf of the City of Los Angeles, Department of Recreation and Parks; Allan Burdick, on behalf of the California State Association of Counties; and Susan Geanacou, with the Department of Finance.

Mr. Fujita supported staff's conclusions and requested that the Commission adopt the staff recommendation.

Member Boel requested confirmation that the cost of doing the analysis of the employees, for fiscal year 2001-2002, was approximately \$32,000. Mr. Fujita affirmed.

Mr. Burdick also supported the staff recommendation. He commented on behalf of the local government education community, that they were thankful for having a full Commission.

Ms. Geanacou supported the staff analysis.

Member Boel asked staff how much time was spent completing the test claim analysis.

Mr. Feller estimated approximately 20 to 30 hours. Member Boel commented that this was a relatively small amount of money for a large use of state resources. She noted that later in the hearing, there would be some discussion about changing the mandates process. She stated that this was an ideal example of why the current process is an inefficient one for reimbursing locals.

Member Lujano made a motion to adopt the staff recommendation. With a second by Member Boel, the motion carried unanimously.

Item 5 Proposed Statement of Decision
 Local Recreational Areas: Background Screenings, 01-TC-11
 See Above

This item is the proposed Statement of Decision for the previously heard test claim.

Member Boel made a motion to adopt the proposed Statement of Decision, which was seconded by Member Worthley.

Eric Feller, Commission Counsel, noted staff's recommendation that the Commission allow minor changes to be made to the final Statement of Decision, including hearing testimony and vote count.

The motion carried unanimously.

Item 6 *Agency Fee Arrangements*, 00-TC-17, 01-TC-14
 Clovis Unified School District, Claimant
 Government Code Sections 3543, 3546, and 3546.3
 Statutes 1980, Chapter 816 (SB 230); Statutes 2000, Chapter 893 (SB 1960)
 Statutes 2001, Chapter 805 (SB 614)

Camille Shelton, Chief Legal Counsel, presented this item. She stated that the test claim addresses the statutory requirement for the payment of fair-share service fees or agency fees paid by school districts or community college districts to the exclusive representative organization. Under prior law, Ms. Shelton explained that the payment of agency fees was the subject of collective bargaining under the Educational Employment Relations Act. The test claim legislation created the statutory requirement for the payment of such fees, thus removing the issue from the collective bargaining process.

Staff found that a portion of the test claim statutes and regulations constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. Staff recommended that the Commission adopt the staff analysis, which partially approved this test claim.

Parties were represented as follows: Keith Petersen, on behalf of Clovis Unified School District; and Susan Geanacou, with the Department of Finance.

Mr. Petersen stood on the written record, noting that although he did not agree, all the issues of concern were addressed.

Ms. Geanacou recommended that the Commission adopt the staff analysis.

Member Worthley made a motion to adopt the staff recommendation. With a second by Member Boel, the motion carried unanimously.

Item 7 Proposed Statement of Decision
 Agency Fee Arrangements, 00-TC-17, 01-TC-14
 See Above

Camille Shelton, Chief Legal Counsel, presented this item. Staff recommended that the Commission adopt the proposed Statement of Decision, and give staff the authority to make minor changes for the vote count and hearing testimony.

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Worthley, the motion carried unanimously.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 10 *Enrollment Fee Collection and Enrollment Fee Waivers*, 99-TC-13, 00-TC-15
Los Rios and Glendale Community College Districts, Claimants
Education Code Section 76300;
California Code of Regulations, Title 5, Sections 58500-58508; 58600, 58601, 58610 – 58613, 58620, 58630
Statutes 1984xx, Chapter 1 (AB 1xx); Statutes 1984, Chapters 274 (AB 207) and 1401 (AB 3776); Statutes 1985, Chapters 920 (AB 602) and 1454 (AB 2262); Statutes 1986, Chapters 46 (AB 2352) and 394 (SB 993); Statutes 1987, Chapter 1118 (AB 2336); Statutes 1989, Chapter 136 (SB 653); Statutes 1991, Chapter 114 (SB 381); Statutes 1992, Chapter 703 (SB 766); Statutes 1993, Chapters 8 (AB 46), 66 (SB 399), 67 (SB 1012), and 1124 (AB 1561); Statutes 1994, Chapters 153 (AB 2480) and 422 (AB 2589); Statutes 1995, Chapter 308 (AB 825); Statutes 1996, Chapter 63 (AB 3031); and Statutes 1999, Chapter 72 (AB 1118)

Item 10 was postponed to the January hearing.

AMEND PARAMETERS AND GUIDELINES BASED ON STATUTES 2004, CHAPTER 313 (AB 2224)

- Item 22 *Animal Adoption*, 04-PGA-01 and 04-PGA-02 (98-TC-11)
State Controller's Office, Requestor
Civil Code Sections 1834, 1846; Food and Agriculture Code Sections 31108, 31752, 31752.5, 31753, 32001, and 32003
Statutes 1998, Chapter 752 (SB 1785)

Item 22 was postponed to the January hearing.

STAFF REPORTS

- Item 23 Acting Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Camille Shelton, Chief Legal Counsel, had nothing further to add to her report.

- Item 24 Executive Director's Report (info/action)
Workload, Staffing, Legislation, and Mandate Reform

Ms. Higashi reported the following:

- *Workload.* There are 109 test claims and 103 incorrect reduction claims pending hearing and determination. The second rulemaking will be published and in effect on December 18.
- *Mandate Reform.* Commission staff conducted a workshop on mandate reform legislation on December 8. Nancy Patton, Legislative Coordinator, noted that Members Jan Boel and Francisco Lujano were present, as well as representatives of the California State Association

of Counties, the SB-90 Service, the Legislative Analyst's Office, the Assembly Budget Committee, the State Controller's Office, school districts, and cities and counties. She stated that the Department of Finance staff was unable to attend the meeting because they were completing the Governor's proposed budget, and thanked the participants for attending the workshop.

Ms. Patton reported that Commission staff presented a list of concepts ranging from substantive to technical changes to the existing process. Parties recommended that a common goal be formulated and more global reforms be discussed. Participants agreed that they were more interested in creating a new, more streamlined process for approving and funding mandates.

At this workshop, Commission members stated their belief that the Commission was also interested in addressing global changes. Some participants, however, questioned whether the Administration and the Legislature were committed to large-scale mandate reform this year, cautioning that without their express interest, it would be extremely difficult to go forward with the discussions.

Ms. Patton indicated that other participants were also interested in addressing reforms to the existing process, such as the incorrect reduction claim process and the state mandates apportionment system. Member Boel requested that the parties submit both large-scale reform proposals and proposals to the existing process for Commission review. Staff will issue a letter requesting proposals.

Overall, participants agreed that the mandates process and reimbursement process must take less time and that there needs to be discussion with the entire Commission as to whether meetings to discuss large-scale mandates reform should commence. However, Ms. Patton cautioned that the key stakeholders must be present at these meetings in order for them to be successful. She added that there must be give and take in negotiations, participants must be willing to compromise, and revisions to the existing process may be necessary in some cases.

Member Boel commented that there would be greater chance of success with a package where everybody got a little and gave a little. However, she was concerned about staff spending too much time on this and there not being real movement and interest in the effort.

Member Lujano stated that Ms. Patton's report was an accurate summary of the workshop.

Member Worthley commented that the goal of government should always be to make improvements. He supported whatever the Commission could do.

Member Boel added that one of the problems with the process is that much of the Legislature has moved on by the time the Commission decides a mandate. Therefore, legislators do not realize the fiscal impact of their decisions. She referenced a proposal mentioned by Steve Keil, with the California State Association of Counties, at the workshop.

Member Sheehan noted that as a newcomer to mandates, it struck her that there had to be a more efficient process. She suggested that all parties get together to discuss possible areas of agreement.

Steve Keil, on behalf of the California State Association of Counties and the League of California Cities, appreciated that the Commission was willing to step up and attempt to facilitate some kind of discussion. He outlined two approaches: 1) find individual changes in the system that may have some consensus; or 2) start out with a common objective and agree

to mutually give up things in order to accommodate that goal. If all parties are willing to participate, he urged the Commission to continue to devote staff time to trying to reach consensus.

Ms. Higashi stated that staff needed guidance from the Commission in terms of how to proceed. She noted that there is major concern that if this was not high on the priority list for the Department of Finance and the Administration this year, any tinkering would be unproductive.

Member Sheehan stated that she would very much like mandates reform to be high on the priority list. Between now and the next hearing, Member Sheehan committed to speaking with representatives of the Governor's Office, the Director of the Department of Finance, the leadership on both sides of the Legislature, and the claimants to discuss convening a working group to identify some of the issues and to get their commitment. She asked staff to propose a process for facilitating discussions on mandate reform at the January hearing. She believes that the issues were too important not to spend the time addressing them. She encouraged those interested in participating to contact Commission staff.

Marianne O'Malley, with the Legislative Analyst's Office, noted that a copy of the Legislative Analyst's Office perspective on the mandate problem and its recommendations would be submitted.

Ms. Higashi stated that the SB 1033 process issue may require a separate working group, that a separate subcommittee on this issue may be helpful, and suggested that Member Worthley may be interested in participating. Member Worthley expressed his interest in participating. Member Sheehan also suggested that Member Olsen may want to participate. Member Olsen responded that she is really interested in the SB 1033 process.

- *New Personnel.* Deborah Borzelleri, Commission Counsel, and Lorenzo Duran, Office Technician, were introduced.
- *Next Agenda.* Tentative items for the January agenda were noted.

PUBLIC COMMENT

There was no public comment.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTION 11126.

PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

New Cases

1. *Eastside Unified High School District v. Commission on State Mandates*, Sacramento Superior Court Case No. 05CS01256
CSM Case No. 05-L-03 [*Graduation Requirements, IRC*]
2. *Woodland Joint Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 05CS01401
CSM 05-L-05 [*Graduation Requirements, IRC*]

Other Cases

3. *Yuba City Unified School District v. State of California, et al.*, Sacramento Superior Court Case No. 05CS01237, CSM Case No. 05-L-01 [*Graduation Requirements IRC*]
4. *John Swett Unified School District v. State of California, et al.*, Sacramento Superior Court Case No. 05CS01262, CSM Case No. 05-L-02 [*Graduation Requirements, IRC*]
5. *West Contra Costa Unified School District, et al. v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 05CS01253 CSM Case No. 05-L-04 [*Graduation Requirements, IRC*]
[Filed on behalf of 12 school districts: West Contra Costa USD, Anderson Union High School District, Center USD, Lake Tahoe USD, Lincoln USD, Linden USD, Novato USD, Ojai USD, Placer Union High School District, San Juan USD, Stockton USD, Vallejo City USD]
6. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01069, CSM Case No. 03-L-01, consolidated with *County of Los Angeles v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS087959, transferred to Sacramento Superior Court, Case No. 05CS00865, CSM Case No. 03-L-11 [*Animal Adoption*]
7. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
8. *San Diego Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01401, CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
9. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01568, CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
10. *San Jose Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01569, CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
11. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01570, CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
12. *Clovis Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01702, CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
13. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 04CS00028, CSM Case No. 03-L-10 [*Graduation Requirements IRC*]

14. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS092146, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*], consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS095456, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]
15. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal [Los Angeles] Case Number B183981, CSM Case No. 04-L-03, (Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]
16. *Southern California Association of Governments, et al. v. Commission on State Mandates*, Sacramento Superior Court Case No. 05CS00956, CSM Case No. 04-L-04 [*Regional Housing Needs Determination-Councils of Government*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

Hearing no further comments, Member Sheehan adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Member Sheehan reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, Member Sheehan adjourned the meeting at 11:41 a.m.

PAULA HIGASHI
Executive Director